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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 249.

E. A. O'SULLIVAN, PLAINTIFF IN ERROR,

vs.

PAUL FELIX AND WILLIAM W. STILES.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

FILED APRIL 29, 1913.

(23,190)

(23,190)

SUPREME COURT OF THE UNITED STATES.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 9, 1914.

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a *Transcript of Record.*

United States Circuit Court of Appeals for the Fifth Circuit.

No. 2255.

E. A. O'SULLIVAN, Plaintiff in Error,
versus
PAUL FELIX et al., Defendants in Error.

Error to the Circuit Court of the United States for the Eastern District of Louisiana.

U. S. Circuit Court of Appeals. Filed Jul- 28, 1911. Charles H. Lednum, Clerk.

b UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday of November, 1911, at New Orleans, Louisiana, before the Honorable Andrew P. McCormick and the Honorable David D. Shelby, Circuit Judges, and the Honorable Thomas S. Maxey, District Judge.

No. 2255.

E. A. O'SULLIVAN, Plaintiff in Error,
versus
PAUL FELIX et al., Defendants in Error.

Be it remembered, That heretofore, to-wit: on the 28th day of July, 1911, a transcript of the record of the above styled cause from the Circuit Court of the United States for the Eastern District of Louisiana was filed in the office of the Clerk of said United States Circuit Court of Appeals for the Fifth Circuit, in words and figures following, to-wit:

1 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana, New Orleans Division.

No. 13890.

E. A. O'SULLIVAN, Plaintiff in Error,
versus
PAUL FELIX et al., Defendants in Error.

W. S. Parkerson, Esquire, for Plaintiff in Error.
A. E. Billings, Esquire, and Rice & Montgomery, Esquires, for Defendants in Error.

Writ of error to the United States Circuit Court for the Eastern District of Louisiana, New Orleans Division, from the United States Circuit Court of Appeals for the Fifth Circuit, returnable within Thirty (30) Days from the Twenty-ninth day of June, A. D. 1911, at the City of New Orleans, State of Louisiana.

2 *Petition.*

Filed April 20, 1911.

United States Circuit Court, Eastern District of Louisiana, New Orleans Division.

No. 13890.

E. A. O'SULLIVAN
versus
PAUL FELIX et al.

UNITED STATES OF AMERICA,
United States Circuit Court,
Eastern District of Louisiana:

To the Honorable the Circuit Court of the United States for the Eastern District of Louisiana:

The petition of Emanuel A. O'Sullivan, a resident of the City of New Orleans, a citizen of the State of Louisiana, and of the United States, respectfully represents:

That on the 13th day of February 1910, one Paul Felix and one W. W. Stiles, and others, residents of the Parish of Jefferson, State of Louisiana, citizens of the State of Louisiana and of the United States, within the jurisdiction of this Honorable Court were indicted by the Grand Jury of said Court, charged with violating Revised Statute of the United States, Section 5508, in the following words and figures:

"That Paul Felix, W. W. Stiles all of the Parish of Jefferson in

said State — Louisiana in the said division of said district and within the jurisdiction of said Court, being persons of evil minds and disposition, together with divers other evil disposed persons, whose names are to the Grand Jurors aforesaid, as yet unknown, on the 3rd day of November in the year of our Lord one thousand nine hundred and eight at the Parish of Jefferson, in the State of Louisiana in the said Division and said District, and within the Jurisdiction of said
3 Court, at which time, to-wit: the 3rd day of November 1908, a general election for Presidential Electors and Members of the House of Representatives of the United States, together with certain State, Parochial and Municipal Officers within the State of Louisiana, who being held under and in accordance with the Constitution of the United States, the laws of the Congress of the United States, and the laws of the State of Louisiana and a poll was then and there opened and an election was then and there legally had and held in each voting precinct in the State, in each of which said voting precincts persons were then and there lawfully voted for by the legal voters therein, for United States Presidential Electors, Members of the House of Representatives and State, Parochial and Municipal Officers and that in a certain precinct to-wit: then precinct known as the City of Kenner; Edward Stoulig, Raoul De Gruy, Henry Roth, Philip Klees, Frederick Schneckberger, Anthony Maggiore, Michael Christina, John Maggiore, Chris Louchbaum, A. Wattigly and divers other persons to the Grand Jurors aforesaid unknown, were then and there as defendants well knew, male citizens of the United States, residents of said voting precinct, twenty-one years of age, and had been citizens and residents of said precinct for more than six months and of said Parish in which said precinct is located for more than one year, and of the said State for more than two years, next preceding said election, and were then and there as defendants well know, under the Constitution and laws of the United States and the laws of the State of Louisiana having complied with the laws of the United States and of the laws of the State of Louisiana, to qualify themselves as electors of the State of Louisiana and legally entitled to vote for persons for Presidential Electors, Members of the House of Representatives of the United States and State Parochial and Municipal Officers, that said voters at the time and place aforesaid presented themselves with the intention and for the purpose of voting; that the defendants knowing all of the aforesaid facts did then and there unlawfully, knowingly and feloniously conspire, confederate, combine and agree together and each of them with the
4 other and they and each of them with divers other parties to the Grand Jurors aforesaid unknown, armed with pistols, guns and other mortal weapons to injure oppress, threaten and intimidate said voters in the free exercise and enjoyment of a right and privilege which they then and there had and which was secured to them by the Constitution and laws of the United States of then and there voting for persons to fill officers of Presidential Electors, Members of House of Representatives, Parochial and Municipal Officers of the State of Louisiana, that in pursuance of said conspiracy and to effect the purpose and object thereof the defendants then and there unlawfully,

wilfully and corruptly, maliciously injured and prevented the said voters from voting on said day, the said being a right or privilege granted and secured to the said Edward Stoulig, Raoul De Gruy, Henry Roth, Philip Klees, Frederick Schneckenberger, Anthony Maggiore, Michael Christina, John Maggiore, A. Wattigly, Cris Louchbaue, in common with all other good citizens of the United States, by the Constitution and laws of the United States of America. Contrary to the form of the Statutes in such case made and provided and against the dignity of the United States.

They were further charged with violating Section of the Revised Statutes No. 5509 as follows:

Count Second.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present that the said Paul Felix, Solomon Bloch, W. W. Stiles, Sidney Whitesides, Frank Hall, Dave Mayer, Jno. T. Fitzgerald, Moxie Wildenstein and McCoy Duke, at the time and place, and in the manner and mode as specified in the first count of this indictment and in the act of conspiring, injuring, oppressing, threatening and intimidating the said Edward Stoulig, Raoul De Gruy, Henry Roth, Philip Klees, Frederick Schneckenberger, Anthony Maggiore, Michael Christina, John Maggiore, A. Wattigly and Cris Louchbaum aforesaid in the free exercise and enjoyment of their right and privilege secured to them by the Constitution and laws of the United States of voting for United States Presidential Electors, Members of the House of Representatives of the United States, State Parochial and Municipal Officers, the said Paul Felix, Solomon Bloch, W. W. Stiles, Sidney Whitesides, Dave Mayer, Jno. T. Fitzgerald, Moxie Wildenstein, and McCoy Duke and Frank Hall aforesaid, did then and there with force and arms, armed with dangerous weapons, to wit: pistols, guns, scissors, wilfully and *faliciously*, [maliciously], unlawfully and feloniously and upon one Emanuel A. O'Sullivan in the peace of the State of Louisiana and of the United States then and there being committed and assault and did then and there wilfully, maliciously, unlawfully and feloniously aforesaid with a pair of scissors and did — and there unlawfully and feloniously, wilfully with a dangerous weapon, to-wit: a pair of scissors, inflict a wound less than mayhem, contrary to the form of the statutes of the State of Louisiana, being section No. 749 of the Revised Statutes of the State of Louisiana as amended by Act No. 17 of 1888, by General Assembly of the State of Louisiana and Contrary to the form of the Statutes in such case made and provided and against the peace and dignity of the United States.

That on the 19th day of May 1910 the said Paul Felix and W. W. Stiles and others were put on trial by Jury, who after the evidence, arguments of Counsel and the charge of the Judge rendered a verdict of guilty on both the aforesaid counts, against the said Paul Felix and the said W. W. Stiles; that after a motion for a new trial was denied, the said Felix and the said Stiles were duly sentenced to fine and imprisonment, whereupon they obtained an appeal to the Circuit

Court of Appeal- for said District, which on the 21" day of March 1911 affirmed the said verdict and *sentenced* [sentence] and all delays and due proceedings had, the said verdict and *sentenced* [sentence] are now final, the whole of which will be more fully seen by the record in the suit of the United States vs. Paul Felix et als., No. 2614 on the Docket of thir Honorable Court.

Your petitioner represents, that Emanuel A. O'Sullivan, the person upon whom the assault, and wounds were inflicted, as set forth in the second count of said indictment, and for which the said Felix and the said Stiles were convicted and sentenced, is present petitioner.

6 Your petitioner further represents, that Paul Felix and William Stiles, aforesaid, did conspire to prevent and did prevent by force and intimidation and threats the citizens named in said indictment, lawfully entitled to vote from giving their support and advocacy in a legal manner, toward and in favor of a qualified person as an elector for President and Vice-President of the United States and for a member of Congress of the United States, to be voted for at the said election above set fort- and while the said Paul Felix, and the said William W. Stiles were so engaged therein in the furtherance of the object of said conspiracy, your petitioner was maliciously, wilfully and without cause or provocation unlawfully cut, bruised, beaten, his face and eye blackened, his beard cut, he knocked down senseless and other indignities were heaped upon him by the said Paul Felix and the said W. W. Stiles.

That by the unlawful and malicious and wilful acts of the said Paul Felix and William W. Stiles your petitioner has suffered in damages in the sum of sixty thousand dollars ($60,000.00).

That your petitioner is Sixty-five years of age, that he has practiced the profession of law for more than Thirty-five years, that he has held positions of honor and trust in this State, having been District Attorney, State Senator and City Attorney of the City of New Orleans.

That on the day of said election, while your petitioner was at the polls at the said election held in the then City of Kenner, being there for the purpose of advising and directing, at their request, the electors, in the manner of conducting said election legally, they being ignorant of the law in such matters, a number of men, imported from far off for that purpose by the said Paul Felix, who at the time was commissioned and acted as Justice of the Peace for that portion of said Parish, and acting under his instructions, set upon your petitioner and pinioning his arms by his side in order to prevent him from protecting or defending himself beat and ill used him, that William W. Stiles, also imported from a distance by the said Felix, a deputy Sheriff of said Parish, seized petitioner's beard and with a pair of shears cut off petitioner's beard. That petitioner raising

7 his hand to protect his face was stabbed in the palm of the left hand by said shears held by the said Stiles, that the annular ligament was severed and the flexor longus policis lacerated, so that the index finger and thumb were rendered useless for many

months; the annular finger of his said hand was also cut to the bone at the first phalanx by said shears, disabling that member for weeks.

Petitioner's eye and face were bruised and blackened by repeated blows and one on the back of his head delivered with force felled him to the ground, where he remained for sometime unconscious.

That petitioner was forced to appear in public, in performing his duties, carrying on his person the signs of the degradation and humiliation placed upon him.

That for the wounding less than mayhem as above set forth he is entitled to damages in the sum of Twenty-five thousand dollars, ($25,000.00).

For the humiliation, degradation and public ridicule to which he was subject, the [*the*] pain of mind caused thereby he has suffered damages in the sum of Twenty-five thousand dollars, (25,000.00).

And in the further sum of Ten thousand dollars ($10,000.00) as punitive and exemplary damages, justly due by the malicious, cowardly and illegal acts of the defendants.

Wherefore the premises considered petitioner prays that a copy of this petition be served on Paul Felix, of the Parish of Jefferson, William W. Stiles, also of said Parish, that they be cited to appear and answer this demand and after the legal delay and due proceedings had, there be judgment in favor of your petitioner and against the said Paul Felix and William W. Stiles in solido, in the full sum of Sixty thousand dollars, ($60,000.00), with legal interest from judgment for all costs and for all and general relief.

(Signed) E. A. O'SULLIVAN.
(Signed) W. S. PARKERSON,
Of Counsel.

8 *Exception—Prescription.*

Filed May 1, 1911.

United States Circuit Court, Eastern District of Louisiana.

No. 13890.

E. A. O'SULLIVAN
versus
PAUL FELIX et al.

Now into said court, come Paul Felix and William W. Stiles, defendants herein, and except to plaintiff's petition and suit herein filed on April 20, 1911, upon the grounds, that the damages alleged in said petition to have been sustained by plaintiff and their value, which he seeks to recover from exceptors, are alleged to have been inflicted by exceptors whilst they were engaged in the commission of an offense and crime against the laws of the United States, and as resulting from such commission of such offense and crime by exceptors on November 3, 1908, more than two years and five months before the filing of said petition, and the right of action to sue for and re-

cover such damages is barred by the prescription of one year from and after the day on which such damages were sustained, under the provisions of Articles 3536 and 3537 of the Civil Code of the State of Louisiana.

Wherefore, exceptors pray, that this exception be maintained; that plaintiff's demand be rejected; and his suit dismissed at his costs, and for all general relief.

(Signed) RICE & MONTGOMERY,
Of Counsel.

9 *Hearing and Submission of Exceptions.*

Extract from the Minutes, April Term, 1911.

NEW ORLEANS, SATURDAY, *May 27th,* 1911.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, District Judge.

No. 13890.

E. A. O'SULLIVAN
versus
PAUL FELIX et al.

This cause came on this day to be heard upon the Exception- filed by the Defendants on May 1st, 1911, to the Petition herein:

Present: A. E. Billings and Rice & Montgomery, Attorneys for Exceptors.

Present: W. S. Parkerson, Attorney for Plaintiff in suit,

And was argued by Counsel for the respective parties and submitted—when the Court took time to consider.

Opinion.

Filed June 14, 1911.

United States Circuit Court, Eastern District of Louisiana.

No. 13890.

E. A. O'SULLIVAN
versus
PAUL FELIX et al.

In this case the defendants have filed a plea of prescription of one year, and the plaintiff concedes that if the action is to be governed by the State statute it is prescribed, but he contends that it is an action for a penalty and governed by the prescrip-
10 tion of five years, established by the Revised Statutes of the United States, 1047.

In my opinion, the suit is for remedial damages and not for a penalty, and, therefore, the plea of prescription will be maintained.

Campbell vs. Heverhill, 156 U. S. 610.

Brady vs. Daly, 175 U. S. 148.

Judgment.

Extract from the Judgment Book.

Circuit Court of the United States, Fifth Circuit and Eastern District or Louisiana, New Orleans Division.

April Term, 1911.

NEW ORLEANS, WEDNESDAY, *June* 14, 1911.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, District Judge.

No. 13890.

E. A. O'SULLIVAN
versus
PAUL FELIX et al.

This cause came on to be heard at a former day upon the Exception of Prescription filed by the Defendants on May 1st, 1911, to the Petition of Plaintiff herein, and after hearing arguments of Counsel for the respective parties was submitted and taken under advisement by the Court:

Whereupon and on due consideration thereof, and for the reasons assigned in writing by the Court now on file, it is ordered,
11 adjudged and decreed that the said Exception of Prescription herein filed by the Defendants, be, and the same is, hereby maintained, and this suit dismissed with costs.

Judgment rendered June 14, 1911.

Judgment signed June 19, 1911.

(Signed) RUFUS E. FOSTER, *Judge.*

Petition and Order for Writ of Error.

Filed June 29, 1911.

UNITED STATES OF AMERICA:

In the [*In the*] Circuit Court of the United States of America for the Eastern District of Louisiana.

No. 13890.

E. A. O'SULLIVAN
versus
PAUL FELIX et al.

To the Honorable the Judge of the United States Circuit Court for the Eastern District of Louisiana:

And now comes the above above plaintiff, by his Attorney, and complains of the record and proceedings had in the above entitled cause, in this:

That on the 14th day of June, 1911, the Honorable Circuit Court of the United States, for the Eastern District of Louisiana, rendered a judgment in said cause maintaining the plea of prescription of one year, under the Statute of Louisiana, interposed by the defendants and dismissing said cause at the cost of the plaintiff herein, by virtue of which action the said E. A. O'Sullivan has suffered damages.

Wherefore, the said E. A. O'Sullivan plaintiff prays for an
12 allowance of writ of error from said judgment of the said United States Circuit Court, and for an order fixing the amount of bond in such case, and for such orders, and process as may cause the same to be corrected by the United States Circuit Court of Appeals for the Fifth Circuit [*District*], held in the City of New Orleans, State of Louisiana.

Dated this — Day of —— 1911.

(Signed) W. S. PARKERSON,
Attorney of Plaintiff.

The foregoing petition for writ of error is hereby granted, and the plea for a writ of error therein made is hereby allowed, on plaintiff's giving bond in the sum of one hundred Dollars.

Done in open Court this 29th day of June, 1911.

(Signed) RUFUS E. FOSTER, *Judge.*

Assignment of Errors.

Filed June 29, 1911.

UNITED STATES OF AMERICA:

United States Circuit Court for the Eastern District of Louisiana.

No. 13890.

E. A. O'SULLIVAN
versus
PAUL FELIX et al.

Assignment of Errors.

And now comes the plaintiff, E. A. O'Sullivan, by his Counsel and Attorney, and alleges that the judgment against him in said
13 cause is erroneous and for errors he assigns the following to-wit:

1. The Court erred in maintaining the plea of prescription of One year, under the Statute of Louisiana, interposed by the defendants in said cause.

2. The Court erred in rendering final judgment against plaintiff dismissing his suit.

(Signed) W. S. PARKERSON,
Attorney for Plaintiff.

Bond for Writ of Error.

Filed July 5, 1911.

Know all men by these presents, That we E. A. O'Sullivan, as principal, and American Surety Co. of N. Y., as sureties, are held and firmly bound unto Paul Felix and W. W. Stiles in the full and just sum of One Hundred dollars to be paid to the said Paul Felix and W. W. Stiles certain attorneys, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 5th day of July, in the year of our Lord, one thousand nine hundred and eleven.

Whereas, lately at a Session of the United States Circuit Court, Fifth Judicial Circuit, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court, between E. A. O'Sullivan vs. Paul Felix and W. W. Stiles a final judgment was rendered against the said E. A. O'Sullivan and the said E. A. O'Sullivan having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the Judgment in the afore-

said suit, and a citation directed to the said Paul Felix and
14 W. W. Stiles citing and admonishing them to be and appear before the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana, within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said E. A. O'Sullivan shall prosecute the writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

[SEAL.] (Sig.) E. A. O'SULLIVAN.
[SEAL.] AMERICAN SURETY COMPANY OF NEW YORK,
By PETER F. PESCUD,
[SEAL.] *Resident Vice-President.*

Attest:
CHAS. HOFFMAN,
Resident Assistant Secretary.

Sealed and delivered in presence of—
(Signed) T. A. O'SULLIVAN.

Approved by—
RUFUS E. FOSTER, *Judge.*

15 *Præcipe for Transcript.*

Filed July 5, 1911.

United States Circuit Court, Eastern District of Louisiana.

No. 13890.

E. A. O'SULLIVAN
versus
PAUL FELIX et al.

To H. J. Carter, Esq., Clerk United States Circuit Court, New Orleans, La.

DEAR SIR: In making up the Transcript on Writ of Error in the above entitled and numbered cause, please include therein the following papers, to-wit:

1. Pleadings.
2. Minute entries.
3. Judgment.
4. Petition and Order for Writ of Error.
5. Assignment of Errors.
6. Bond for Writ of Error.

(Signed) E. A. O'SULLIVAN,
Plaintiff in Error.

New Orleans, July 5th, 1911.

16 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

Clerk's Office.

I, Henry J. Carter, Clerk of Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, do hereby certify that the foregoing 15 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, and assignment of errors, in the case of E. A. O'Sullivan versus Paul Felix et al., No. 13,890 of the docket of the said court: said transcript being made in accordance with the præcipe for transcript, copied at page 15 of said transcript.

Witness my hand and the seal of said court at the city of New Orleans, this 11 day of July, A. D. 1911.

[SEAL.] H. J. CARTER, *Clerk*.

17 *Citations.*

THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Paul Felix, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at the City of New Orleans, within 30 days from date hereof, pursuant to a writ of error filed in the Clerk's Office of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, wherein E. A. O'Sullivan is plaintiff in error and Paul Felix and W. W. Stiles are defendants in error, to show cause, if any there be, why the judgment rendered against the said E. A. O'Sullivan, as in said Writ of Error mentioned, should not be cor-
18 rected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 29th day of June in the year of our Lord one thousand nine hundred and eleven.

(Signed) RUFUS E. FOSTER, *Judge*.

Clerk's Office.
A True copy.
New Orleans, La., June 29th, 1911.
[SEAL.] H. J. CARTER, *Clerk*.

Received by U. S. Marshal, New Orleans, La., June 29, 1911.

Before the undersigned authority this day personally came and appeared T. F. Laiche, Deputy U. S. Marshal, for the eastern District

of Louisiana, personally known to me as such, who, being duly sworn, deposes and says, that he, affiant did on the 30th day of June, 1911, serve the original of which this writ is a certified
19 copy on Paul Felix, by handing the same to E. A. Billings, attorney of record, in persons, in the city of New Orleans on Friday, June 30th, 1911.

T. F. LIAHCE,
Deputy U. S. Marshal.

Sworn to and subscribed before me on this 30th day of June, 1911.
VICTOR LOISEL,
U. S. Marshal.

The foregoing has the following indorsements to-wit: ,

Return. United States Circuit Court, Eastern District of Louisiana. No. 13890. E. A. O'Sullivan vs. Paul Felix et al. Citation of Appeal. Marshal's return. No. —.

U. S. Circuit Court, Eastern District of Louisiana, New Orleans Division. Filed Jul- 1, 1911. H. J. Carter, Clerk. W. B. Donovan, Dep. Clerk.

2255. U. S. Circuit Court of Appeals. Filed Jul- 28, 1911. Charles H. Lednum, Clerk.

20 THE UNITED STATES OF AMERICA,
Circuit Court of the United States,
Eastern District of Louisiana:

The President of the United States to W. W. Stiles, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at the City of New Orleans, within 30 days from date hereof, pursuant to a Writ of Error filed in the Clerk's Office of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, wherein E. A. O'Sullivan is plaintiff in error and Paul Felix and W. W. Stiles are defendants in error, to show cause, if any there be, why the judgment rendered against the said E. A. O'Sullivan as in said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in
21 that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 29th day of June in the year of our Lord one thousand nine hundred and eleven.

(Signed) RUFUS E. FOSTER, *Judge.*

Clerk's Office.
A true copy.
New Orleans, La., June 29th, 1911.
[SEAL.] H. J. CARTER, *Clerk.*

Received by U. S. Marshal, New Orleans, La., June 29/11.

Before the undersigned authority this day personally came and appeared T. F. Laiche, Deputy U. S. Marshal, for the Eastern District of Louisiana, personally known to me as such, who, being duly sworn, deposes and says that he, affiant, did on the 30th day of June, 1911, serve the original of which this writ is a certified copy on W. W. Stiles by handing the same to E. A. Billings, attorney of
22 record, in person, in the city of New Orleans on Friday, June 30th, 1911.

T. F. LAICHE,
Deputy U. S. Marshal.

Sworn to and subscribed before me on this 30th day of June, 1911.

VICTOR LOISEL,
U. S. Marshal.

The foregoing has the following indorsements to-wit:

Return. United States Circuit Court. Eastern District of Louisiana. No. 13890. E. A. O'Sullivan vs. Paul Felix, et al. Citation of Appeal. Marshal's Return.

No. —. U. S. Circuit Court, Eastern District of Louisiana, New Orleans Division. Filed Jul- 1, 1911. H. J. Carter, Clerk. W. B. Donovan, Dep. Clerk.

2255. U. S. Circuit Court of Appeals. Filed Jul- 28, 1911. Charles H. Lednum, Clerk.

23 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Circuit Court of the United States in and for the Fifth Circuit, and holding Sessions for the Eastern District of Louisiana, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between E. A. O'Sullivan, plaintiff, and Paul Felix and W. W. Stiles defendants in the suit entitled E. A. O'Sullivan vs. Paul Felix et al., No. 13890 of the Docket of said Court, a manifest error hath happened, to the great damage of the said E. A. O'Sullivan, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the
24 record and proceedings aforesaid, with all the things concerning the same, to the United States Circuit Court of Appeals for the Fifth Circuit, together with this writ, so that you have the same at New Orleans within 30 days from the date hereof, in the said United States Circuit Court of Appeals, to be then and there held; that, the record and proceedings aforesaid being inspected,

the said United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward D. White, Chief Justice of the said Supreme Court of the United States, this 29 day of June in the year of our Lord one thousand nine hundred and eleven.

H. J. CARTER,
Clerk of the United States Circuit Court
for the Eastern District of Louisiana.

Allowed
RUFUS E. FOSTER, *Judge.*

25 The foregoing has the following indorsements to-wit:

No. 2255. United States Circuit Court. No. 13890. E. A. O'Sullivan vs. Paul Felix, et al. Writ of Error.

No. —. U. S. Circuit Court, Eastern District of Louisiana, New Orleans Division. Filed Jun- 29, 1911. H. J. Carter, Clerk. W. B. Donovan, Dep. Clerk.

U. S. Circuit Court of Appeals. Filed Jul- 28, 1911. Charles H. Lednum, Clerk.

Argument & Submission.

JAN. 17, 1912.

No. 2255.

E. A. O'SULLIVAN
vs.
PAUL FELIX et al.

On this day this cause was regularly called, and after argument by W. S. Parkerson, Esq., for plaintiff in error, and Chas.
26 Rice, Esq., and Alfred E. Billings, Esq., for defendants in error, was submitted to the court

Opinion.

In the United States Circuit Court of Appeals, Fifth Circuit.

Number 2255.

E. A. O'SULLIVAN, Plaintiff in Error,
vs.
PAUL FELIX et al., Defendants in Error.

Error to the Circuit Court of the United States for the Eastern District of Louisiana.

W. S. Parkerson, for plaintiff in error.

Alfred Billings, R. B. Montgomery, and Chas. S. Rice, for defendants in error.

27 Before McCormick and Shelby, Circuit Judges, and Maxey, District Judge.

By the COURT:

We are of the opinion that this is an action for damages and not for a penalty. The statute of limitation of five years against suits for penalties or forfeitur-s (R. S. U. S., § 1047) is, therefore, not applicable. We find no federal statute of limitations applicable to the case. It follows that the state statute, which prescribes the action in one year, must be applied. Civil Code of Louisiana, §§3536, 3537. We are constrained, therefore, to hold that the trial court correctly ruled that the action is barred.

Affirmed.

(Original filed Jan. 30, 1912.)

Judgment.

No. 2255.

E. A. O'SULLIVAN
vs.
PAUL FELIX et al.

28 This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Louisiana, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this court that the judgment of the said Circuit Court in this cause be, and the same is hereby, affirmed.

It is further ordered and adjudged that the plaintiff in error, E. A. O'Sullivan, and the surety on the writ of error bond herein, American Surety Company of New York, be condemned, in solido, to pay the costs of this cause in this court, for which execution may be issued out of said Circuit Court.

Jan. 30, 1912.

Petition for Rehearing.

29 United States Circuit Court of Appeals for the Fifth District.

No. 2255.

E. A. O'SULLIVAN, Plaintiff in Error,
versus
PAUL FELIX et al., Defendants in Error.

Petition and Brief on Behalf of Plaintiff in Error for Rehearing.

W. S. Parkerson, Attorney of Plaintiff in Error, E. A. O'Sullivan. February 14th, 1912.

U. S. Circuit Court of Appeals. Filed Feb. 17, 1912. Frank H. Mortimer, Clerk.

30 United States Circuit Court of Appeals for the Fifth District.

No. 2255.

E. A. O'SULLIVAN, Plaintiff in Error,
versus
PAUL FELIX et al., Defendants in Error.

Brief on Behalf of Plaintiff in Error for Rehearing.

To the Honorables the Judges of the United States — Court of Appeal-, Fifth District:

The petition of Emanuel A. O'Sullivan, plaintiff in error, respectfully represents:

That there is error to his prejudice in the judgment rendered by this Honorable Court, on the 30th day of January, 1912, in the following particulars, to-wit:

31 That the Court erred in decreeing that the prescription of one year, under the Statute of Louisiana (Article 3536 of the Louisiana Code), could be successfully pleaded against this suit brought by plaintiff in error under a Federal Statute.

The Statute of the United States, under which this suit is brought, is Chapter XXII, April 20, 1871, and is entitled:

"An Act to enforce the provisions of the Fourteenth Amendment to the Constitution of the United States and for other purposes," set forth in the compiled Revised Statutes of the United States under the title "Civil Rights," Section 1980, par. third:

"* * * or if two or more persons conspire to prevent by force, "intimidation or threat any citizen, who is lawfully entitled to vote, "from giving his support or advocacy in a legal manner, toward or "in favor of the election of any qualified person as an elector for "President or Vice-President or as a member of Congress of the "United States; or to injure any citizen in person or property on ac- "count of such support or advocacy; in any case of conspiracy set "forth in this section, if one or more persons engaged therein do or "cause to be done any act in furtherance of the object of such con- "spiracy, whereby another is injured in his person or property, or "deprived of having or exercising any right or privilege of a citi- "zen of the United States, the party so injured, or deprived may have "an action for the recovery of damages occasioned by such injury "or deprivation, against any one or more of the conspirators."

32 Neither in the original act nor in the section of the compiled Statutes (1890) is any time or limitation prescribed in which "the person injured or deprived of such right may have and maintain an action for the recovery occasioned by such injury or deprivation against any one or more of the conspirators," But Section 1891, R. S. U. S.:

"Every person who was knowledge that any of the wrongs conspired to be done, and mentioned in the preceding Section (1890) are about to be committed and having power to prevent or aid in the

preventing of the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable deligence could have prevented. * * *"

"But no action under the provisions of this Section (Sec. 1981), " shall be sustained, which is not commenced within one year after " the cause of action has accrued."

R. S., Sec. 722:

"The jurisdiction in civil and criminal matters conferred on the District and Circuit Courts by the provisions of this title and of title "Civil Rights" and of the title "Crimes" for the protection of all persons in the United States in their civil rights and for their vindication, shall be exercised and enforced in conformity with
33 the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases when they are not adapted to the object or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against the law, the common law as modified. * * *"

In his original brief, petitioner strenuously opposed the invocation of the State Statute of limitation against a Federal Statute, maintaining that if there was any prescription to the action, now before the Court, it should fall under Section 1047 of the Revised Statutes of the United States, in which suits or prosecutions for penalties were prescribed, in five years.

His contention was based on the belief, that as the Statute was enacted for the enforcement of the provisions of the Fourteenth Amendment; for the protection of all persons in the United States in their civil rights; and for their vindication, it was a penal Statute, and all punishment of whatever nature therein inflicted, must be in the nature of a penalty, for the violation of any of its provisions.

However, this Honorable Court has decreed that the case does not come under the head of "penalty," and that therefore Section 1047, R. S., does not apply.

Petitioner respectfully requests the Court to reconsider the conclusion reached, on this very important question.

Petitioner respectfully represents, that there was and is another question raised in his contention, which he now apprehends
34 was not sufficiently brought to the attention of the Court:

Can a State Statute ever be invoked against a Federal Statute?

The right to sue is necessarily derived from the sovereign power, without this given right no one has a standing in Court. The Federal Sovereign gave this right to your petitioner under Chapter XXII April 20th, 1871, to sue for injuries inflicted, and specially commanded the Courts on whom was conferred the jurisdiction of such case, under the provisions of the title "Civil Rights" and title "Crimes," to exercise the same (jurisdiction) "in conformity with the laws of the United States."

The sovereign power by whom the right to sue is given, has also the right to declare when that right shall cease, in other words, when

by lapse of time the grantee shall be considered as having abandoned or forfeited that right. Now in the present Statute the sovereign power, has ex industria, specially refrained from imposing any time in which this right shall cease; can then an inferior power intervene and interpose a limitation to that right which the superior refused to impose?

Petitioner alleges that the omission by the superior was "ex industria," this is apparent, from the fact, that Section 1980, omits any mention of limitation and the following section, punishing a minor offender for the indirect violation of the former section, specially limits suit against him to one year.

The common law has no prescription or limitation, the nearest approach to it is "staleness;" prescription, then is statutory, and when the Statute is silent none exists.

35 Petitioner again respectfully suggests to the Court, the incongruity which would arise by permitting the several States, through their respective legislatures to place limitations on Statutes passed by the Federal authority; under such conditions Federal laws would be at the mercy of the whims of legislatures, the enforcement of Federal laws dependant on what the States would consider appropriate, extending "State Rights" far beyond the most sa-guine desire of the strict constructionist.

In this petition for relief, petitioner has been restricted, to simply call the Court's attention, to the questions submitted, without any elaboration, and in view of the far reaching effects of the matters and things involved, and, as petitioner believes, this is the first time this Statute has directly been brought to the attention of the Court, petitioner would respectfully pray for permission to address the Court orally.

Wherefore petitioner prays that permission be granted him to address the Court orally, and that the judgment of the lower Court be reversed and a new trial granted to him.

And for all and general relief.

W. S. PARKERSON,
Attorney of Plaintiff in Error E. A. O'Sullivan.

February 14th, 1912.

36 I, the undersigned attorney of Emmanuel A. O'Sullivan, plaintiff in error, do hereby certify, that the above and foregoing petition for rehearing is well founded in law and that the same is not interposed for delay.

W. S. PARKERSON.

37 *Order Denying Rehearing.*

M'CH 5, 1912.

No. 2255.

E. A. O'SULLIVAN
vs.
PAUL FELIX et al.

Ordered that the petition for rehearing filed in this cause be, and the same is hereby, denied.

Petition for Writ of Error & Order.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

No. 2255.

E. A. O'SULLIVAN, Plaintiff in Error,
vs.
PAUL FELIX et als., Defendants in Error.

To the Honorables the Judges of the United States Circuit Court of Appeals for the Fifth Circuit:

38 Your petitioner, E. A. O'Sullivan, plaintiff in error in the above entitled and numbered cause, Respectfully Represents: That the above entitled cause is now pending in the Circuit Court of Appeals for the Fifth District, and a judgment has herein been rend-red, on the 30th day of January, 1912, affirming the judgment of the Circuit Court, for the Eastern District of Louisiana, and that an application for rehearing has been denied, on the 17th day of February, 1912; and that the matter in controversy in said cause exceeds the sum of Two thousand dollars, exclusive of costs; and that the jurisdiction of none of the courts mentioned is or was dependent in any wise upon the opposite parties to the suit or controversy, being aliens and citizens of the United States, or citizens of the different States and that the cause does not arise under the patent laws, nor revenue laws, or under the copyright laws, or under the criminal laws, -or is it a case in admiralty; and that it is a case to be

39 reviewed by the Supreme Court of the United States, upon a writ of error,

Therefore your petitioner would respectfully pray that a Writ of error be allowed him in the above entitled cause, directing the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, to send the record and proceedings in this cause with all things concerning same to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith

filed by said plaintiff in error, may be reviewed and if error be found, corrected according to the laws of the United States.

E. A. O'SULLIVAN,
Plaintiff in Error.
W. S. PARKERSON,
Of Counsel for Plaintiff in Error.

Order of Allowance.

The foregoing petition is granted and writ of error allowed as prayed for, upon plaintiff in error furnishing bond according to law in the sum of Two hundred & fifty dollars, said bond to
40 operate as a supersedeas—This 18th March, 1912.

DAVID D. SHELBY,
Judge U. S. Circuit Court of Appeals.

The foregoing has the following indorsements to-wit:
#2255. United States Circuit Court of Appeals, Fifth Circuit. E. A. O'Sullivan, Pl'ff in Error, vs. Paul Felix, et als., Def't- in Error. Petition and order for Writ of error to U. S. Supreme Court.
U. S. Circuit Court of Appeals. Filed Mar. 21, 1912. Frank H. Mortimer, Clerk.

Assignment of Errors.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals for the Fifth Circuit.

No. 2255.

41 E. A. O'SULLIVAN, Plaintiff in Error,
vs.
PAUL FELIX et als., Defendants in Error.

Assignment of Errors.

And now comes plaintiff in error, E. A. O'Sullivan, by his Counsel and Attorney, and alleges that the judgment rendered against him in the above entitled and numbered cause, by affirming the judgment of the United States Circuit Court for the Eastern District of Louisiana, is erroneous and for errors he assigns the following to-wit:

1. The Court erred in decreeing that the cause was not based on a penal statute, and that the damages imposed by said statute were not penal.

2. That the Court erred in maintaining the plea of prescription of One Year, under the Statute of Louisiana, interposed by
42 the defendants in said cause.

3. That the Court erred in rendering final judgment,

affirming the judgment of the Circuit Court, and dismissing plaintiff's suit.

E. A. O'SULLIVAN,
Plaintiff in Error.
W. S. PARKERSON,
Of Counsel.

The foregoing has the following indorsements to-wit:
#2255. U. S. Circuit Court of Appeals for the Fifth Circuit. E. A. O'Sullivan, Pl'ff in Error, vs. Paul Felix, et als., Def'ts in Error. Assignment of Errors.
U. S. Circuit Court of Appeals. Filed Mar. 21, 1912. Frank H. Mortimer, Clerk.

Bond.

United States Circuit Court of Appeals, Fifth Circuit.

E. A. O'SULLIVAN, Plaintiff in Error,
vs.
PAUL FELIX et als., Defendants in Error.

43 Bond for Costs.

Know all men by these presents: That E. A. O'Sullivan as Principal, and American Surety Co. of N. Y. as surety, are held and firmly bound unto Paul Felix and William W. Stiles in the sum of Two hundred and fifty ($250.00) dollars, to be paid to the said Paul Felix and William W. Stiles, their certain attorneys, executors, heirs, administrators or assigns, for which payment we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 19th day of March, in the year 1912.

Whereas, lately, at a term of the United States Circuit Court for the Eastern District of Louisiana at the April term of 1911, in a suit pending in said Court between E. A. O'Sullivan, plaintiff and Paul Felix and William W. Stiles, defendants, judgment was rendered against the said E. A. O'Sullivan, dismissing his said suit, and,

44 Whereas, the said E. A. O'Sullivan duly obtained a writ of error to the United States Circuit Court of Appeals for the Fifth Circuit; which Court, on the 30th day of January, 1912, rendered a judgment affirming said judgment in all particulars, and on the 5th day of March, 1912, denied an application for rehearing and the said E. A. O'Sullivan having sued out a writ of error from the United States Circuit Court of Appeals to the Supreme Court of the United States, and having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Paul Felix and William W. Stiles, citing and admonishing them to be and ap-

pear at the Supreme Court of the United States at Washington within thirty days from the date thereof;

Now, therefore, the condition of the above obligation is such, that if the said E. A. O'Sullivan shall prosecute said writ of error
45 to effect and answer all damages and costs if he fail to make this plea good, then the above obligation to be void, else to remain in full force and effect.

E. A. O'SULLIVAN.
AMERICAN SURETY CO. OF N. Y. [SEAL.]
PETER F. PESCUD, *Res. Vice-President.*

Attest:
CHAS. HOFFMAN, *Res. Ass't Secretary.*

Approved and to operate as a supersedeas.
DAVID D. SHELBY,
Judge of the United States Circuit Court of Appeals, Fifth Circuit.

The foregoing has the following indorsements to-wit:
No. 2255. United States — Court of Appeals, Fifth Circuit. E. A. O'Sullivan vs. Paul Felix et als. Bond.
U. S. Circuit Court of Appeals. Filed Mar. 21, 1912. Frank H. Mortimer, Clerk.

46 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said United States Circuit Court of Appeals, before you, or some of you, between E. A. O'Sullivan, Plaintiff in error, and Paul Felix and William W. Stiles, Defendants in Error, affirming a Judgment dismissing his suit on the 30th day of January, 1912, in favor of Paul Felix and William W. Stiles, Defendants in Error, a manifest error hath happened, to the great damage of the said E. A. O'Sullivan, Plaintiff in Error, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record, and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the

United States, the 18th day of April, in the year of our Lord one thousand nine hundred and twelve.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

Allowed by
DAVID D. SHELBY,
U. S. Circuit Judge.

47 [Endorsed:] No. 2255. In the United States Circuit Court of Appeals, Fifth Circuit. E. A. O'Sullivan, Plaintiff in Error, vs. Paul Felix, et al., Defendants in Error. Writ of Error. Filed 22 day of April, 1912. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

It is hereby certified that a copy of this writ is this day lodged in the Clerk's office, of the United States Circuit Court of Appeals for the Fifth Circuit, for the use of the defendant in error, this 22nd day of April, 1912.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER, *Clerk.*

48 UNITED STATES OF AMERICA, *ss:*

United States Circuit Court of Appeals, Fifth Circuit.

The President of the United States to Paul Felix and William W. Stiles, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, wherein E. A. O'Sullivan is Plaintiff in Error, and you are Defendants in Error, to show cause, if any there be, why the judgment rendered against the said Plaintiff in Error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the United States, this 18th day of April, one thousand nine hundred and twelve.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

DAVID D. SHELBY,
U. S. Circuit Judge.

Service accepted, New Orleans, La., April 22nd, 1912.
ALFRED BILLINGS &
CHAS. S. RICE,
Attorneys for Defendants in Error, Without Prejudice.

[Endorsed:] No. 2255. In the United States Circuit Court of Appeals, Fifth Circuit. E. A. O'Sullivan, Plaintiff in Error, vs. Paul Felix, et al., Defendants in Error. Citation. Filed 22 day of April 1912. Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals.

49 United States Circuit Court of Appeals for the Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 17 to 48 next preceding this certificate contain full, true and complete copies of all pleadings, record entries and proceedings, including the opinion of the U. S. Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said court, numbered 2255, wherein E. A. O'Sullivan is plaintiff in error, and Paul Felix et al. are defendants in error, as full, true and complete as the originals of the same now remain on file and of record in my office, except that the original citation and writ of error are included instead of copies.

I further certify that the pages of the printed record from
50 1 to 15 are identical with the printed records upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 23d day of April, A. D. 1912.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals.

Endorsed on cover: File No. 23,190. U. S. Circuit Court of Appeals, 5th Circuit. Term No. 249. E. A. O'Sullivan, plaintiff in error, vs. Paul Felix and William W. Stiles. Filed April 29th, 1912. File No. 23,190.

SUPREME COURT, U. S.
FILED
MAR 9 1914
JAMES D. MAHER
CLERK

Supreme Court of the United States

OCTOBER TERM, 1913.

No. 249.

E. A. O'SULLIVAN,
Plaintiff in Error,

versus

SAM FELIX AND WILLIAM W. STILES.

In Error to the United States Circuit Court of Appeals for the Fifth Circuit.

W. S. PARKERSON,
Of Counsel.

E. A. O'SULLIVAN,

E. T. Archibald Pte. Co., Baton Rouge, 518 Natchez St.

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Supreme Court of the United States

No. 249.

E. A. O'SULLIVAN,
Plaintiff in Error.

versus

PAUL FELIX, et als.,
Defendants in Error.

Brief of E. A. O'Sullivan, Plaintiff in Error.

STATEMENT OF THE CASE.

The defendants in error, Paul Felix and W. W. Stiles, were indicted with others, in the United States Circuit Court, for the Eastern District of Louisiana for the violiation of the Statute:

> **Chapter XXII**: "An act to enforce the provisions of the Fourteenth Amendment to the Constition of the United States, and for other purposes." Approved April 20th, 1871.

First Count.

"If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise and enjoyment of any right or privilege secured to him by the Constitution or laws of the United States or because of his having so exercised the same, shall be fined not more than five thousand dollars and imprisoned not more than ten years, and shall moreover be ineligible to any office or place of honor, profit, or trust created by the Constitution or laws of the United States." **(Revised Statutes, Sec. 5508).**

Second Count.

"If in the act of violating any provision in either of the two preceding sections (5507-5508) any felony or misdemeanor be committed the offender shall be punished for the same with such punishment as is attached to such felony or misdemeanor by the laws of the State in which the offense is committed." **(Revised Statutes 5509).**

The indictment under the First Count charged:

"That the defendants did unlawfully, knowingly, and feloniously conspire, confederate, combine, and agree together and each of them with the other, and they and each of them with divers other parties to the Grand Jurors aforesaid unknown, armed with pistols, guns and other mortal weapons, to injure, oppress, threaten, and intimidate voters in the free exercise and enjoyment of right and privilege which they then and there had and which was secured to them by the Constitution and laws

of the United States of then and there voting for persons to fill the offices of Presidential electors, members of the House of Representatives, parochial and municipal officers of the State of Louisiana; that in pursuance of said conspiracy and to effect the purpose and object thereof, the defendants then and there unlawfully, willfully, and corruptly, maliciously injured and prevented the said voters from voting on said day * * * "

The indictment under the Second Count charged:

"That the defendants in error, at the time and place, as set forth in the First Count, while in the act of conspiring, injuring, oppressing, threatening, and intimidating certain American citizens and voters in the free exercise and enjoyment of their right and privilege secured to them by the Constitution and laws of the United States of voting for United States presidential electors, members of the House of Representatives of the United States, State, Parochial and Municipal Officers, did then and there with force and armed with dangerous weapons, to wit: pistols, guns, scissors, willfully, and maliciously, unlawfully, and feloniously and upon one E. A. O'Sullivan did then and there, willfully, maliciously, unlawfully and feloniously aforesaid, with a pair of scissors, and did then and there unlawfully and feloniously, wilfully with a dangerous weapon, to-wit, a pair of scissors, inflict a wound less than mayhem * * *"

The defendants, after due trial, were found guilty on both counts, and sentenced: from the verdict and sentence, they appealed to the Court of Appeals. The verdict and sentence were affirmed, by decree rendered March 21st, 1911. The verdict and sentence being final,

plaintiff in error, on April 20th, 1911, filed his petition, which is now the subject matter before this Honorable Court.

The petition sets forth that plaintiff in error suffered personal injuries at the hands of the defendants in error, at an election for presidential electors, members of the House of Representatives of the United States, etc., held on the 3rd day of November, 1908, in the City of Kenner, State of Louisiana.

The proceedings are based on the Statue of the United States, Chapter XXII, approved April 20th, 1871. **(Rev. Stat., "Civil Rights," 1980)**. For the convenience of the Court, we quote the statute in extenso:

> **Chapter XXII**: "An act to enforce the provisions of the Fourteenth Amendment to the Constitution of the United States, and for other purposes.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
>
> "That any person, who, under color of any law, statute, ordinance, regulation, custom, or usage of a State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity or other proper proceeding for redress, such proceeding to be prosecuted in the several District or Circuit Courts of the United States with any subject to the

same rights of appeal, review upon error, and other remedies provided in like cases in such courts, under the provisions of **Ninth** of April, entitled 'An act to protect all persons in the United States in their civil rights and to furnish the means of their vindication,' and the other remedial laws of the United States, which are in their nature applicable in such cases.

Section 2: "That if two or more persons within any State or Territory of the United States shall conspire together to overthrow or put down or destroy by force the government of the United States, or to levy war against the United States, or to oppose by force the authority of the government of the United States, or by force, intimidation, or threat to prevent, hinder, or delay the execution of any law of the United States, or by force, intimidation or threat to prevent, hinder or delay the execution of any law of the United Statts, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, or by force, intimidation or threat to prevent any person from accepting or holding any office or trust or place of confidence, under the United States, or from discharging the duties thereof, or by force, intimidation, or threats to induce any officer of the United States to leave any State or District or place where his duties as such officer might lawfully be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or to injure his person while engaged in the lawful discharge of the duties of his office, or to injure his property so as to molest, interrupt, hinder, impede him in the discharge of his official duty; or by force, intimi-

dation or threat to deter any person, party or witness in any Courts of the United States, from attending Court or from testifying in any matter pending in such Courts fully, fairly and truthfully, or to injure any such party or witness in his person or property on account of his having so testified; or by force, intimidation or threats to influence the verdict, presentment, or indictment of any juror or grand juror in any court of the United States, or to injure such person in his person or property on account of any verdict, presentment or indictment lawfully assented to by him or on account of his being or having been such juror, or shall conspire together or go in disguise on the public highway, or upon the premises of another for the purpose, either directly or indirectly, of depriving any person or any class of persons of the equal protection of the laws or of equal privileges or immunities under the laws or for the purpose of preventing or hindering the constituted authorities of any State from giving or securing to all persons within such State the equal protection of the laws; or shall conspire together for the purpose of in any manner impeding, hindering, obstructing, or defeating the due course of justice in any State or Territory, with intent to deny to any citizen of the United States the due and equal protection of the laws, or to injure any person in his person or property for lawfully enforcing the right of any person or class of persons to the equal protection of the laws; or by force, intimidation, or threat to prevent any citizen of the United States lawfully entitled to vote, or from giving his support or advocacy in a lawful manner towards or in favor of the election of any lawfully qualified

person, as an elector of President or Vice President of the United States, or as a member of Congress of the United States, or to injure any citizen in his person or property on account of such support or advocacy, each and every person so offending shall be deemed guilty of high crime, and upon conviction thereof in any District or Circuit Court of the United States, or District or Supreme Court of any Territory of the United States, be punished by a fine of not less than five hundred nor more than five thousand dollars or by imprisonment with or without hard labor as the Court may determine, for a period of not less than six months nor more than six years, as the Court may determine, or by both, such fine and imprisonment as the Court shall determine.

"**And, if any one or more persons engaged in any such conspiracy, whereby any person shall be injured in his person or property, or deprived or having and exercising any right or privilege of a citizen of the United States, the person so injured or deprived of such rights or privileges may have and maintain an action for the recovery of damages occasioned by such injury or deprivation of rights or privileges against any one or more persons engaged in such conspiracy, such action to be prosecuted in the proper District or Circuit Court of the United States, with and subject to the same rights of appeal, review upon error, and other remedies provided in like cases in such courts under the provisions of the act of April, nineteen hundred and sixty-six, entitled 'An act to portect all persons in the United States in their civil rights, and to furnish means of their vindication.'**

Section 3: "Authorizing the President, when the State authorities are incapable to suppress insur-

rections, to protect or shall fail to protect the people in their rights, to employ the military or the land and naval forces to suppress the same.

Section 4: Repealed.

Section 5: Repealed.

Section 6:. "That any person or persons having knowledge that any of the wrongs conspired to be done and mentioned in the Second Section of this Act are about to be committed, and having the power to prevent or aid in preventing the same, shall neglect or refuse so to do, and such wrongful act shall be committed, such person or persons shall be liable to the person injured or his legal representative for all damages caused by any wrongful act which first named person or persons by reasonable diligence could have prevented; and such damages may be recovered in the action on the case in the proper Circuit Court of the United States, and any number of persons guilty of such wrongful neglect or refusal may be joined in such action. Provided,

"**That such action shall be commenced within one year after such cause of action shall have occurred**, and if death of any person shall be caused by such wrongful act and neglect, the legal representatives of such deceased person shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of such deceased person, if there be any, or if there be no widow for the benefit of the next of kin of such deceased person.

Section 7: "That nothing herein contained shall be construed to supersede or repeal any former act or law, except so far as the same may be repugnant thereto; and any offense heretofore commit-

ted against the tenor of any former act shall be prosecuted, and any proceeding already commenced for the prosecution thereof shall be continued and completed, the same as if this act had not been passed, except so far as the provisions of this act may go to sustain and validate such proceedings." **(Congressional Globe, Part 2 and Appendix, 1st Ses., 42d Congress, 1871).**

The defendants in error excepted to the petition, upon the ground that the damages alleged to have been inflicted resulted from such commission of such offense on November 3d, 1908, more than two years and five months before the filing of said petition, and that the right of action is barred by the prescription of one year, under the provisions of Articles 3536 and 3537 of the State of Louisiana.

The exception was tried and judgment rendered maintaining the same, and dismissing plaintiff's suit.

A writ of error was taken to the Circuit Court of Appeals for the Fifth Circuit, which after argument, affirmed the judgment of the Court of first instance, and from which judgment a writ of error was duly taken to this Honorable Court, and is the subject matter now before the Court.

The only issue before this Court is whether the Statute of Limitation of the State of Louisiana of one year may be successfully pleaded against this Federal Statute, which is in its very nature **penal.**

SPECIFICATION OF ERRORS.

1. The Court erred in decreeing the action to be one for damages and not for penalty.

2. The Court erred in decreeing that the statute of limitation of five years **(R. S. U., S. 1047)**, is not applicable to the case at bar.

3. The Court erred in decreeing that the State Statutes **(Civil Code of Louisiana, Secs. 3536, 3537)**, were applicable to the case.

4. The Court erred in maintaining the prescription of one year and dismissing plaintiff's suit.

ARGUMENT.

Plaintiff in error resisted the plea, contending that the Federal Statutes on which these proceedings were based were enacted, not only to protect the rights of the citizens of the United States, but also to protect the government itself from the onslaught of those, who having no respect but brute force on the one hand and unprincipled corruption on the other, for

> "If the government of the United States has within its constitutional domain no authority to provide against evils; if the very source of power may be poisoned by corruption or controlled by violence and outrage, without legal restraint, then indeed, is the country in danger, and its best powers, its highest purposes, the hope which it inspires and the love which enshrines it are at the

> mercy of the combinations of those who respect no right but the brute force on the one hand and unprincipled corruptionists on the other."

The Statute imposes **three** penalties on the violators of its provisions, the one not **exclusive** of the other:

> 1. A fine not less than five hundred dollars nor more than five thousand dollars, or by imprisonment with or without hard labor not less than six months, nor more than six years, or by both such fine and imprisonment.
> 2. An action for the recovery of damages for injuries occasioned by those in their endeavor to violate the same.
> 3. An action for injuries sustained against those who knowing that the acts prohibited were about to be committed failed or neglected to prevent the same, having within their power means to do so.

The defendants in error invoke, to support their plea, Art. 3536 of the Civil Code of Louisiana:

> "The following actions are also prescribed by one year: That for injurious words, whether verbal or written, and for damages caused by animals or resulting from offenses or quasi-offenses * * *" Art. 3537, "and, in other cases from that on which the injurious words, disturbance or damage were sustained." Art 3537.

These then are the laws which the defendants in error are urging against **Statutes of the United States**, as we contend penal in their very nature.

"To protect all persons in the United States in their civil rights, and furnish the means for their vindication," and

"To enforce the provisions of the Fourteenth Amendment to the Constitution of the United States and for other purposes."

And moreover, in the very face of Sec. 722, Revised Statutes of the United States **(Chapter XXXI of 1866, Vide Appendix)**.

"The jurisdiction conferred on the District and Circuit Courts by the provisions of this title and 'Civil Rights' and the Title 'Crimes,' for the protection of all persons in the United States in their **civil rights** and for their **vindication,**

Shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect."

Congress has designated in what forum cases of this nature must be brought, and in unmistakable terms has declared what laws shall govern the actions when so brought.

That there are laws suitable to carry the same into effect, and that there is no occasion to bring in State laws to control Federal Statutes is evident:

"No suit or prosecution for any penalty or forfeiture, pecuniary or otherwise, accruing under the United States, shall be maintained, except in cases where it is otherwise specially provided, unless the same is commenced within five years from the time when the penalty or forfeiture accrued." * * * **R. S., Sec. 1047.**

As the Statute under consideration does not specially mention within what period the action should be brought, we, necessarily, turn to the above Section of the Revised Statutes (enacted March 2nd, 1799) for guidance.

It is manifest that Congress had in its mind, if any, that no other prescription or limitation should be interposed to any action under this Statute, against the **active** or **principal** violators of it, than the Section above quoted (**R. S., 1047**), for we find, that in giving the right of action against those having knowledge that wrongs were to be committed and having the power to prevent the same, neglect or refuse to do so, shall be liable in damages to the party injured, Provided

> "**That such action shall be commenced within one year after such cause of action shall have accrued.**"

It is inconceivable that Congress, which has shown so great a determination to protect all the citizens in their Civil Rights, and to have sole control over suits brought under the Statutes in question would, after specially declaring that against the **minor** offender the limitation to the bringing the suit be fixed at one year, allow a State to interpose her limitation on behalf of the **major** offender, irespective of the Federal laws, and declare that, as to him, the major, the prescription of one year shall also prevail. It was the intention, clearly expressed, that this law, the very bulwark of free institutions, should be enforced uniformly over the United States, under the laws of the United States and no others.

It is futile for the defendants in error to appeal to Section 721 of the Revised Statutes:

> "The laws of the several States, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the Courts of the United States, in cases where they apply."

. For the reason that Congress has specially designated and commanded that the Statute in question shall be enforced under the laws of the United States.

Or can the defendants in error derive any consolation from Sec. 722, Revised Statutes:

> "The jurisdiction . . . . . but in all cases, where they (laws) are not adapted to the object or are deficent in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the Constitution and Statutes of the States where the Court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States in the trial and disposition of the cause and if it is of a criminal nature, in the infliction of punishment on the party found guilty."

For the reason that the laws are in no way deficient, and are specially provided for cases coming within the Statute; nd because, as shall be hereinafter discussed, State laws, when Federal laws are wanting to punish crime, may be invoked to furnish suitable remedies to reach the criminal; but a plea of prescription is not a

remedy, it is a defense, the laws of a State cannot be appealed to defeat a Federal law. Moreover, the Statute specially declares that it (the Statute)

> "Shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect."

Congress was resolved not to allow the various States of the Union to interfere in the prosecutions of those violating this Statute, the debates on the passage of the Bill show what was intended (vide Appendix) and the intent was expressedly made manifest by the mandatory provisions contained in the Statute.

> ". . . . . such action to be prosecuted in the proper District or Circuit Court of the United States, with and subject to the same rights of appeal, review upon error and other remedies, provided in like cases in such Courts, **under the provisions of Act of April, Eighteen Hundred and Sixty-Six, entitled "An Act to Protect All Persons in the United Sttes in Their Civil Rights and to Furnish Means For Their Vindication."**

And the Act referred to reads:

> "The jurisdiction of the Civil and Criminal are hereby conferred on the District and Circuit Courts of the United States, and shall be exercised and **enforced** in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect, but in all cases where such laws are not adapted to the object or are deficient in the provisions necessary to furnish suitable **remedies** and **punish** offences against the laws . . . . ." **R. S. U. S. 722 (Chapter XXXI of April, 1866, vide Appendix.)**

Now the effect of this Statute is to supply remedies to the Government, in case any be omitted, to reach the criminal and punish the offender; it is not to supply the criminal with a plea of Prescription, for such a plea is not a remedy, but a defense.

The Sovereign alone can limit the right of action.

Every civil right possessed by the citizens of the United States is granted them by the Sovereign People, through the intermediary of Congress, which is restricted in its powers by the mandate of the Sovereign, as contained in the Constitution.

The supreme law of the land, therefore, is the Constitution and laws of the United States, which shall be enacted in pursuance thereof.

It follows, therefore, that a Statute enacted by Congress within the Constitution, becomes the law of the land, and must be enforced under the laws of the United States, without the interference, obstruction or annulment by any inferior power.

Statutes enacted by Congress must necessarily have their effect and must be enforced in all the States of the Union, uniformly; no preference, discrimination, or immunity can be granted in the one over the other.

To have then a prescription of one year a good defense to one State; in another three years; in another six years, would create an anomaly, inconsistent with our system of Government, whose great essential is, equal rights to all men.

The citizen derives his right to have recourse to the Courts from the Sovereign power, and that power giving him that right has the sole authority to lay down rules

and regulations for the exercise of that right. It may, therefore, declare when and how litigation may be commenced, when it shall terminate, and when through his act the citizen is barred from the exercise of that right.

So that, when the Sovereign deems fit to limit that right or refrains from placing a limit on it, no inferior power can step in and by any act either enlarge, limit or control that right. It is within the power of the Sovereign to avail itself of the rules and regulations, mode or procedure, adopted by the inferior, in order in case of any omision or oversight some remedy to prevent crime or the enforcement of its laws may be lacking, then by special enactment the Supreme power signifies its intent by so declaring. **R. S., Sec 722,** above cited.

The statutes of the Sovereign power must and do prevail in all the Courts of the Union, not only in its own Courts, but also in the Courts of every State, they must be taken cognizance of without special plea or evidence to support them; not so, however, with the Statutes of the several States; the Sovereign power, represented by its Courts, is not presumed to have knowledge of their existence, unless their attention is called to them by proper evidence, and then as the case demands, if they are not in conflict with the paramount laws, due weight will be given them.

Exercising its power, Congress has enacted laws limiting the time in which all actions and prosecutions may be brought under its statutes, specifying the various actions and prosecutions by name, and in case any special

action or prosecution be omitted, Congress has enacted a general statute to cover any such omission.

R. S. 1047:

> "No suit or prosecution for any penalty or forfeiture, pecuniary or otherwise, accruing under the laws of the United States, shall be maintained, except in cases where it is otherwise specially provided, unless the same is commenced five years from the time when the penalty or forfeiture accrued....."

So that every conceivable action and prosecution which may be brought in the Federal Courts, under Federal statutes, is amenable to the limitation fixed by Congress, and should it arise that some action or prosecution is not covered by any statute of limitation, in that event there is no limitation and no State can impose any, since the will of the Sovereign intends there shall be none.

The statute in question, in so far as regards the **major** criminal, is silent, but, when it refers to the **minor** offender, to him who actually committed no offense, except by omission, it declares that, as to him, his prosecution shall be limited to one year. And now defendant in error would claim the same limitation, though they were the major wrong-doers, and ask the Court to interpose the State statute of limitations against their punishment.

Enacted under special authorization of the United States Constitution to enforce the greatest rights that could be bestowed by the Sovereign power, the whole act is one, and a violation of any section, or part of it, is a violation of the whole.

We respectfully submit to the consideration of the Court:

1st: That "penalties" in law signifies every punishment that the law-maker imposes or permits to be imposed, pecuniary damages, fines, imprisonment, death.

2nd: That the legislative power of Congress is restricted to eighteen subjects, set forth in Article 1, Section 8th, of the Constitution of the United States, and the amendments thereto.

3rd: That all laws enacted by Congress under the restrictions, must tend directly or indirectly to the preservation and maintenance of the Government.

4th: That all laws enacted by Congress are necessarily penal, since they cannot be enforced without punishment.

5th: That Chapter XXII, "An Act to enforce the provisions of the Fourteenth Amendment to the Constitution of the United States and other purposes" is strictly penal and must be enforced under penal laws.

We respectfully submit that there is error in the judgment rendered, that the plea of prescription of one year under the Statute of Louisiana should be dismissed; that the said judgment be reversed, and the cause remanded for further trial.

And in order that the intent of Congress may be ascertained, we beg to submit as an "Appendix" the history

as taken from the Congressional Record of the times, when it was deemed necessary not only to enact **remedial** laws, but also "Preventative" or Punitory statutes; in other words, to **remedy** what then was being done and to prevent its occurrence in the future, availing ourselves of the authority of this Court for so doing:

> "Although debates may not be used as a means of interpretation of a Statute **(United States vs. Trans-Missouri Freight Ass., 166 U. S., R. 318; 41 Fed. 1919, 17 Supt. Court 548** and cases cited), that rule in the nature of things is not violated by resorting to debates as a means of ascertaining the environment at the time of the enactment of a particular law, that is the history of the period when it was adopted." **Standard Oil Co. vs. United Sttes, term 1910, 512.**

E. A. O'SULLIVAN,

Of Counsel.

APPENDIX.

HISTORY OF THE LEGISLATION — ORIGINAL STATUTES.

1861.

President Lincoln, in his inaugural address, denied the right of secession, and auuounced that he would at all hazards hold, occupy and possess the property and places belonging to the United States and collect the duties and imports.

This declaration being antagonistic to the ideas of many of the Southern States, many of them withdrew from the Union and declaring war against the United States, stormed and captured, on the 13th of April, 1861, Fort Sumter.

On the 15th April, 1861, the President, by proclamation, convoked a special meeting of Congress, to sssemble on the 4th of July, 1861 the purpose being to enact such legislation as in its judgment would meet the conditions then existing, and to inform it, that he had under the powers granted him by the Constitution called out 75,000 troops to quell "the insurrection."

Congress met, and in compliance with the recommendation of the President, Mr. Hickman, July 17th, 1861, introduced in the House of Representatives, Bill No. 45:

> "An Act to define and punish certain conspiracies."

The debates on this bill were but brief, the members realizing that such an act was necessary, and with but two verbal amendments the bill was passed; the main

and only objection to it, and that was not very earnestly urged, was that the bill made certain acts treasonable, which were not so under the Constitution.

The Act reads:

> "That if two or more persons within any State or Territory of the United States shall conspire together to overthrow or put down or destroy by force the Government of the United States or to oppose by force the authority of the Government of the United States * * *
>
> **(Now R. S., 5836.)**
>
> or by force to prevent, hinder or delay the execution of any law of the United States, or by force to seize, take or possess any property of the United States, against the will or contrary to the authority of the United States, or by force or intimidation or threats to prevent any person from accepting any office or trust or place of confidence under the United States,
>
> **(R. S. 1980-5518)**
>
> each and every person so offending shall be guilty of a high crime and upon conviction * * *
>
> **(R. S. 5336).**"

1865.

The war is over, one of the greatest and most noble men of the country's many great and noble men, Abraham Lincoln, had been taken away by the assassin's bullet, at a time (April 14th, 1865) when he could ill be spared, and the Vice-President, Andrew Johnson, presided.

Though the war had ceased, still many were the lawless deeds committed in several of the vanquished States, which called for additional legislation to protect the people in their rights.

Senator Trumbull introduced the followig bill:

> "An Act to protect all persons in the United States in their Civil Rights and furnish means for their vindication."

This bill gave rise to great discussion, both in the House and Senate, party lines were strictly drawn. Many objections were urged against the bill, principally because **it took from the State Courts all jurisdiction over the acts specified therein and lodged it in the Federal Courts.**

Having passed both houses, it was presented to the President for approval.

The President declined to sign the bill and vetoed the same. His main objection to the bill was to Section 3 of the Act:

> "The jurisditcion in Civil and Criminal matters hereby conferred on the District and Circuit Courts of the United States shall be exercised and enforced **in conformity with the laws of the United States** so far as such laws are suitable to carry the same into effect, but in all cases where such laws are not adequate, or, are deficient in the provisions necessary to furnish suitable remedies and punish offences against the law. * * *"

In his message vetoing the act, the President said:

> "It is only when the offense does not happen to "be within the purview of the Federal law, that "the Federal Courts are to try and punish him "under any other law. Then resort is to be had "to 'the common law as modified and changed' by "State legislation so far as the same is not incon- "sistent with the Constitution and laws of the " 'United States.' "

The President further denied the power of Congress to transfer to Federal Courts the classes of cases embraced in this act (**Cong. Globe, 39; Cong. Part 11, 1st Sess., p. 1680**). ....

This objection of the President is exactly what is contended for, that the United States by the act was given absolute jurisdiction over these cases, and it is only when there is no law in the United States Statutes covering the case that then, and then only, shall the State laws be invoked.

The United States has provided for all laws necessary to cover the crimes set forth in this act, suitable in every way; for by Sec. 1047 it has limited the action to five years, and therefore the State law cannot be interposed.

It was the intention of Congress to prevent the States from interfering with this act; the President and the Members of Congress, as shown by the debates, appreciated the force of the bill and what was intended and what the language itself expressed, and though vetoed, the bill, "the President's veto notwithstanding," passed by a vote of 33 to 15, in the House where it originated.

The Act is as follows:

Chapter XXXI.

1866.

"An Act to protect all persons in the United States in their Civil Rights and furnish the means for their vindication."

Section 1. Declares who shall be considered citizens. **(R. S. 1992.)**

Section 2. The offences denounced. **(R. S. 1979.)**

Section 3.

"The jurisdiction of the Civil and Criminal mat-
"ter are hereby conferred on the District and Cir-
"cuit Courts of the United States, and shall be ex-
"ercised and enforced in conformity with the laws
"of the United States, so far as such laws are suit-
"able to carry the same into effect, but in all cases
"where such laws are not adapted to the object or
"are deficient in the provisons necessary to fur-
"nish suitable remedies and punish offences
"against the laws, etc."

(R. S. 722.)

Section 4. Duties of District Attorneys and Marshals.
(R. S. 1982.)

Section 5. Duty of Marshals.
(R. S. 1984.)

Section 6. Punishing interference with officers.
(R. S. 5522.)

Section 7. Fees of Officers.
(R. S. 1896.)

Section 8. Authorizing President to act.
(R. S. 1988.)

Section 10. Granting appeals to Supreme Court.
(R. S. 1989.)

This Statute ws enlarged, May 31st, 1870. **Chapter CXIV, 41st Congress, 2nd Sess.; Congress Globe, Part 7, Appendix 69-70,** being,

"An Act to enforce the right of citizens of the United States to vote in the several States of the Union, and for other purposes,"

by changing the punishment of the fine

"not to exceed Five Thousand and the penalty not to exceed ten years,"

and the additional penalty,

"AND SHALL MOREOVER BE THEREAFTER INELIGIBLE TO AND DISABLED FROM HOLDING ANY OFFICE OR PLACE OF HONOR, PROFIT OR TRUST UNDER THE CONSTITUTION OR LAWS OF THE UNITED STATES."

Many and grave were the outrages committed during this period. Elections were conducted with armed force, the popular voice was destroyed, in fact, politically speaking, there was chaos. The attention of the Government was called to the conditions of affairs, and President Grant, by special message to Congress (March 23rd, 1871), informed that body and stronly recommended the enacting of such legislation as would meet the exigencies of the times.

Accordingly, Representative Shellabarger introduced in the House of Representatives a resolution moving for the appointment of a select committee to comply with the recommendations of the President.

The commitee reported and introduced H. R. Bill No. 320 (March 28th, 1871).

An Act:

> "To enforce the provisons of the Fourteenth Amendment to the Constitution of the United States and for other purposes."

Never in the history of the world were greater oratory and patriotic eloquence displayed than in the long debates which the introduction of the bill gave rise to in both Houses of Congress. Intellectual giants met intellectual giants—Sherman of Ohio, Davis of Kentucky,

Sumner of Massachusetts, Kelley of Tennessee, McHenry of Kentucky, Shellabarger of Ohio, Edwards of Vermont, Stevenson of Kentucky—each clause, each sentence, each paragraph, each section, was debated and strenuously urged and opposed by the contending parties.

The proponents of the measure drew the attention of Congress and of the world to the outrages committed, both against the whites and the blacks, the murders, the arsons, the assassinations, specially pleading that the very foundation of the Government, its free institutions, all depended on the enforcement of this constitutional provision:

> "If the Government of the United States has
> "within its constitutional domain no authority to
> "provide against evils; if the very source of power
> "may be poisoned by corruption or controlled by
> "violence and outrage, without legal restraint,
> "then, indeed, is the country in danger and its best
> "powers, its highest purposes, the hope which it
> "inspires and the love which enshrines it are at
> "the mercy of the combinations of those who
> "respect no right but brute force on the one hand
> "and unprincipled corruptionists on the other."

The opponents, on the other hand, contended that the act was solely and only for the protection of the colored man.

The debates were long and acrimonious, occupying, with the KuKlux investigation, almost the entire session of Congress.

The Act became a law, by a strict party vote, and the President approved the same, April 20th, 1871.

3

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Supreme Court of the United States

OCTOBER TERM, 1913.

No. 249.

E. A. O'SULLIVAN,
Plaintiff in Error,

versus

PAUL FELIX AND W. W. STILES,
Defendants in Error.

BRIEF FOR DEFENDANTS IN ERROR.

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BRIEF FOR DEFENDANTS IN ERROR.

A.

This action was brought originally on April 20, 1911, in the United States Circuit Court for the Eastern District of Louisiana.

The alleged cause of action, a tort, occurred on November 3, 1908.

B.

Between the date of the alleged tort and the filing of this suit elapsed a period of over two years and five months.

The petition recites the two counts of an indictment in the District Court of the United States, in the first of which the defendants, with others unknown, it was charged, on November 3, 1908, at a general election for presidential electors and members of Congress, together with certain State officers, under and in accordance with the Constitutions, ~~the laws of Congress and the State of Louisiana~~, did feloniously conspire, confederate, combine and agree together, and with divers persons unknown, armed with pistols, the laws of Congress and the State of Louisiana, did threaten and intimidate certain voters mentioned, besides others unknown to the Grand Jury, in the free exercise and enjoyment of the right of voting for persons to fill such Federal and State offices; and in pursuance of said conspiracy, and to effect the purpose and object thereof, unlawfully, willfully and corruptly, maliciously injured and prevented said voters from voting; said right of voting being a right or privilege granted and secured by the Constitution and laws of the United States.

The matters were so charged under Section 5508 of the Revised Statutes of the United States.

In the second count, these defendants, with others named, it is charged, did, in furtherance of the conspiracy charged in the first count, being armed with dangerous weapons—to wit, pistols, guns, scissors—willfully and maliciously did assault and inflict a wound on Emanuel A. O'Sullivan (the plaintiff meaning) less than mayhem, contrary to the form of Section 749 of the Revised Statutes of Louisiana. (Rec., p. 4.)

C.

The petition charges, further, that on May 19, 1910, the defendants named therein, including the present defendants

in error, were put on trial, and these defendants were convicted on both counts in the indictment, and were sentenced to fine and imprisonment, and on appeal to the United States Circuit Court of Appeals the judgment appealed from was affirmed on March 21, 1911.

D.

The petition charges, also, that,

> "in furtherance of the conspiracy charged, petitioner "was maliciously, willfully and without cause or "provocation unlawfully cut, bruised and beaten, his "face and eye blackened, his beard cut, he was "knocked down senseless, and other indignities were "heaped upon him by the said Paul Felix and the said "W. W. Stiles."

Then follows this allegation, which is quoted *verbatim:*

> **"That by the unlawful and malicious and will-"ful acts of the said Paul Felix and William W. "Stiles, your petitioner has suffered in damages in "the sum of sixty thousand dollars ($60,000)."**

The petition further alleges other details purporting the manner in which the assault upon him was committed—charging, amongst other things, the cutting of his beard with a pair of scissors, as well as the wounding of his hand, by the defendant Stiles.

E.

The **specifications** as to damages suffered by plaintiff for and on account of which monied reparation is sought are as follows (Rec., p. 8) :

> **"That for the wounding less than mayhem, " * * * he is entitled to damages in the sum "of $25,000.**

"For the humiliation, degradation and public "ridicule to which he was subject (id.), the pain "of mind caused thereby, he has suffered damages "in the sum of $25,000.

"And in the further sum of $10,000 as puni- "tive damages and exemplary damages, justly due "by the malicious, cowardly and illegal acts of the "defendants."

The position of the defendants in error is that all damages recoverable under the statute invoked are remedial and reparative only; but that the **statute** in no wise opens the door for recovery of "punitive or exemplary damages."

F.

The plea of prescription (statute of limitations) of one year was interposed by the defendants, and was maintained, and on writ of error the cause was carried by plaintiff to the Circuit Court of Appeals for the Fifth Circuit, where the judgment of the Circuit Court was affirmed. **(194 Fed. Rep. 88.)**

G.

It is before this Court on a writ of error to the Circuit Court of Appeal.

In his application for the writ, plaintiff in error disclaims that the cause of action depends in any wise upon the opposite parties to the suit or controversy being aliens or citizens of the United States, or citizens of the different States; that the cause does not arise under the patent or revenue laws, or copyright laws, or is a case in admiralty; and alleges that it is a case to be reviewed by the Supreme Court of the United States upon a writ of error. (Rec., p. 20.)

We assume, therefore, the writ to have been applied for under the act of March 3, 1891, and Sections 128 and 241 of the Judicial Code of March 3, 1911.

H.

The errors assigned in the District Court are:

> "FIRST. The Court erred in maintaining the "plea of prescription of one year under the statute "of Louisiana interposed by the defendants in said "cause.
>
> "SECOND. The Court erred in rendering final "judgment against plaintiff, dismissing his suit."

I.

The errors assigned for the present writ are:

> "FIRST. The Court erred in denying that the "cause was not (*sic*) based on a penal statute, and "that the damages imposed by said statute are not "(*sic*) penal.
>
> "SECOND. The Court erred in maintaining the "plea of prescription of one year under the statute "of Louisiana interposed by the defendants in said "cause.
>
> "THIRD. The Court erred in rendering final "judgment, affirming the judgment of the Circuit "Court, dismissing paintiff's suit"

K.

Article 2315 of the Civil Code of Louisiana (under the head of "Offenses and Quasi-Offenses") prescribes:

> "Every act whatever of man that causes damage "to another obliges him by whose fault it happened "to **repair** it," etc.

Article 3536 prescribes:

"The following actions are prescribed by **one "year:**

"Those for injurious words, whether verbal or "written, and those for damages caused by animals **"or resulting from offenses or quasi-offenses."**

And Article 3537 declares:

"The prescription mentioned in the preceding "article runs from the day * * * on which the "injurious words, disturbance or **damage** were **sus-"tained."**

L.

The reasons for dismissing the case n the Circuit Court were:

"In this case, the defendants have filed a plea "of prescription of one year, and the plaintiff con-"cedes that, if the action is to be governed by the "State statute, it is prescribed; but he contends that "it is an action for a **penalty,** and governed by the "prescription of five years, established by the Re-"vised Statutes of the United States, 1047.

"In my opinion, the suit is for remedial damages "and not for a penalty, and, therefore, the plea of "prescription will be maintained." Citing

Record, p. 7 Campbell vs Hanrahill, 175 U.S. 610-6
Brady vs Daly, 175 U.S. 148 - 156

In the Circuit Court of Appeals, the judgment of the District Court was affirmed.

194 Fed. Rep. 88; Record, p. 16.

The Court's reasons were:

"We are of the opinion that this is an action for "damages and not for penalty. The Statute of Limi-

"tations of five years against suits for penalties or "forfeitures (R. S., Par. 1047) is, therefore, not ap- "plicable. We find no Federal statute applicable to "the case. It follows that the State statute, which "prescribes the action in one year, must be applied. "(Civil Code of Louisana, Arts, 3536, 3537.) We are "constrained, therefore, to hold that the trial Court "correctly ruled that the action is barred."

M.

The grounds of plaintiff's application for a rehearing in the Circuit Court of Appeals (Record, p. 17) were, in substance:

FIRST. That the Court erred in decreeing that the plea of prescription of one year could be successfully pleaded to his suit "brought * * * under a Federal statute."

SECOND. (Pp. 18 and 19) pleaded in the form of question: "Can a State statute be invoked against a Federal statute?"—meaning, presumably: "Can **the** State statute be invoked against **the** Federal statute," under which his action is brought.

To the first, plaintiff would seem to have furnished the negative answer; for he has admitted repeatedly in both the Circuit Court and the Circuit Court of Appeals that, if his action be not for the recovery of a penalty, the prescription under the Civil Code of Louisiana does apply; and the authorities are so numerous in holding that laws for the recovery of damages such as those described in the United States law on which his suit is founded, are remedial, and not punitive, as to be considered fixed law in the Federal, as they would be in the State Courts of Louisiana.

C. C., Arts. 2315, 3536, 3537.

In the Circuit Court of Appeals, as in the Circuit Court, plaintiff conceded (Record, p. 7), that, if the action is to be governed by the State statute, it is prescribed, but he contended that it is an action for a penalty, and subject to the prescription of five years under Section 1047 of the Revised Statutes.

The penalty under the Section 1980 is fine and imprisonment, which has been imposed and suffered, and we take it that no further **penalty** could be imposed under the section; but the act under which the action provides for recovery, by him and no other, of the "damages occasioned by such injury or deprivation" as charged, is remedial. (Record, p. 17.) Plaintiff admits that "neither in the original act, nor in the section of the Revised Statutes under which he sues, is any time limitation prescribed" for his alleged cause of action.

He argues, however (pp. 18 and 19):

He argues further (pp. 18 and 19) that "the sovereign "power by whom the right to sue is given, has also the right "to declare when that right shall cease," and as the sovereign power has refrained from so declaring, "can then an "inferior power **intervene** and **interpose** a limitation to "that right which the superior **refused** to impose?"

When the character of the action is disclosed—in the one case, if it be for the recovery of a penalty—the limit is fixed by the United States (Sec. 1047), and as certainly fixed by adoption as its own, by Congress (Sec. 721), of the limitation fixed by the State, when the suit is for the moneyed **reparation** of a personal or property injury.

Our friend, the plaintiff, will hardly deny the **power** of the United States to adopt, in legal form, such provision as

its own, as if, **verbatim,** the provision were written into the statute.

Section 721, Revised Statutes, United States:

> "The laws of the several States, except where "the Constitution, treaties or statutes of the United "States otherwise provide, shall be regarded **as rules "of decision** in trials at common law, in the Courts "of the United States, in case where they apply."

This act, Section 34 of the Judiciary Act of 1789, has been interpreted repeatedly, and perhaps most frequently with respect to statutes of limitation of the States, in the enforcement or application of Federal statutes where the statute fixed no limit for such enforcement.

One salutary effect of the provision is to create a uniform system of practice between the Federal and the State Courts, wherever a Federal statute becomes authority for controversy in the Federal Courts.

In an early case (**McCluny vs. Williams, 3 Peters, 276**), a suit for damages **ex delicto,** this Court said:

> "The decision in this cause depends on the con- "struction of the Statute of Ohio, which prescribes "**the time within** which certain actions must be "brought. It is a well-settled principle that a statute "of limitations is the law of the forum, and operates "upon whosoever submit themselves to its jurisdic- "tion. In the 34th section of the Judiciary Act of "1789, it is provided that the laws of the several "States, except where the Constitution, treaties or statutes of the United States shall otherwise require "or provide, shall be regarded as rules of decision in "trials at common law, in the courts of the United "States, in cases where they apply. Under this "statute the Acts of Limitations of the several States,

"where no special provision has been made by Con-
"gress, form a rule of decision in the courts of the
"United States, and the same effect is given to them
"as is given in the State court."

In a later case, **Amy vs. Dubuque, 98 U. S. 470,** this Court said again:

"The question of limitation presented for our
"consideration upon this writ of error depends for
"its solution upon the Statutes of Iowa. 'It is not to
" 'be questioned,' said this Court in **Hawkins vs.**
"Barney's Lessee, 5 Pet. 457, 'that laws limiting the
" 'time of bringing suit constitute a part of the **lex**
" **'fori** of every country. They are laws for adminis-
" 'tration of justice—one of the most sacred and im-
" 'portant of sovereign rights. It is as little to be
" 'questioned that the Courts of the United States, in
" 'the absence of legislation upon the subject by Con-
" 'gress, recognize the Statutes of Limitations of the
" 'several States, and give them the same construc-
" 'tion and effect which are given by the local tri-
" 'bunals.' "

By the Act of March 3, 1897, in effect January 1, 1898, the limitation of any suit for the recovery of profits or damages for any infringement of a patent was fixed at six years.

Sec. 4921, Revised Statutes, as amended; 29 Stat. at Large, p. 694.

Macomber on the "Fixed Law of Patents," Ed. 1909, p. 837:

"State Statutes of Limitations apply to an ac-
"tion at law for infringement."

And of **Campbell vs. Haverhill, 155 U. S. 601,** says:

"This case is the leading case upon this subject
"and for the first time this question has been settled
"in the affirmative by the Supreme Court."

To which pronouncement is appended a long list of cases where the theretofore diversity of opinions is shown.

Still later, in **McLaine vs. Rankin, 197 U. S. 158,** Chief Justice Fuller said:

> "It is conceded that, in the absence of any pro-
> "vision of the Act of Congress creating the liability,
> "fixing a limitation of time for commencing actions
> "to enforce it, the Statute of Limitations of the par-
> "ticular State is applicable."
>
> Citing **Rev. Stat. U. S., Par. 721;** and **Campbell vs. Haverhill, 155 U. S. 610.**
>
> "If, then, this action was barred by the Statute
> "of Limitations of the State of Washington, that
> "ended it."

We understand that the point of difference of the majority of the Court from those who dissented was as to the character of the liability of the defendant, and, therefore, which one of two statutes of the State of Washington, relative to limitations, applied.

And yet later, in **Dupree vs. Mansur, 214 U. S. 161,** Mr. Justce Holmes, in April, 1909, said, speaking for the Court:

> "The identical proposition relied on by the peti-
> "tioners is recognized in **Ewell vs. Daggs, 108 U. S.**
> **"147,** as follows: 'If a debt secured by the lien of a
> " 'mortgage is barred by the Statute of Limitations,
> " 'then, according to the law of Texas, the foreclosure
> " 'suit is barred, but not otherwise; for the mortgage
> " 'is a mere incident to the debt, * * * and the
> " 'incident in law as in logic, must abide the date of
> " 'the principal.' "
>
> "Upon such questions the law, as held by the
> "Supreme Court of Texas, must furnish the rule of
> 'decision.' "

In the Circuit Court of Appeals, as in the District Court, plaintiff conceded (Rec., p. 7) that if the action is to be governed by the State statute it is prescribed; but he contended that it is an action for a penalty, and subject to the prescription of five years under Section 1047 of the Revised Statutes.

The **penalty** under Section 1980 or 5508 is fine and imprisonment, which has been imposed and suffered, and we take it that no further **penalty** could be imposed under the section; but the act under which the action provides for recovery, by him and no other, is of the "damages oc- "casioned by such injury or deprivation"—clearly remedial (p. 17).

The case of **Campbell vs. Haverhill, 155 U. S. 610,** arose before Congress had adopted the act of March 3, 1897, itself creating, what Congress had not created before, a statute of limitations against suits for damages resulting from infringement of patents. The period of limitations having been variously determined in the Circuit Court, this Court undertook to determine and fix what the law was, saying:

> "In view of this conflict of opinion, which seems "to be wholly irreconcilable, we shall dispose of it as "an original question."

And the Court then proceeded to answer in the affirmative the question: "Does the statute of Massachusetts "requiring actions of **tort** to be begun within six years from "the time the cause of action accrued operate as a defense "to this action?"

And respecting Section 721 of the Revised Statutes, making the laws of the several States, except when spe-

cially excepted, "rules of decision" in the courts of the United States, the Court there said:

> "Indeed, to no class of State legislation has the "above provision been more steadfastly and consist- "ently applied than to statutes prescribing the time "within which actions shall be brought within its "jurisdiction."

It was said, also, by this Court, through Mr. Justice Gray, in **Bauserman vs. Blunt, 147 U. S. 647, 652,** after quoting Section 721:

> "No laws of the several States have been more "steadfastly or more often recognized by this Court, **"from the beginning, as rules of decision in the "courts of the United States,** than **statutes of lim- "itation of actions,** real and personal, as enacted by "the Legislature of a State, and as construed by its "highest Court."

And the Justice cited from **Leffingwell vs. Warren, 2 Black. 603,** that Mr. Justice Swayne had, with the support of earlier opinions, laid down the following propositions:

> "Courts of the United States, in the absence of "legislation upon the subject by Congress, recognize "the statutes of limitation of the several States, and "give them the same construction and effect which "are given by the local tribunals. **They are a rule** "of decision under the 34th section of the Judicial "Act of 1789 " (Sec. 721 of the Revised Statutes). "The construction given to a statute of a State by "the highest judicial tribunal of such State is re- "garded as part of the statute, and is as binding "upon the Courts of the United States as the text."

And in further support of the proposition there is cited from Mr. Justice Harlan, speaking for the Court, in **Arny vs. Dubuque, 98 U. S. 470: (p. 471):**

> "It is not to be questioned that laws limiting the "time of bringing suit constitute a part of the *lex* "*fori* of every country; they are laws for administer- "ing justice, one of the most sacred and important "of sovereign rights"; and that it is as little to be questioned that "the Courts of the United States, in "the absence of legislation upon the subject by Con- "gress, recognize the statutes of limitation of the "several States, and give to them the same construc- "tion and effect which are given by the local tri- "bunals."

Quoting from Mr. Justice Holmes in **Dupree vs. Mansur, 214 U. S. 161, 167:**

> "It appears to us equally their" (U. S. Courts) "duty, when the local law decides that the words cre- "ate a right, to take the measure of that right from "the same source. The notes are barred, as well in "equity as at law. By the law of Texas, the security "is incident to the note, and does not warrant a fore- "closure when the note does not warrant a judgment. "This is not a matter of procedure or jurisdiction, "but of substantive rights concerning land. It seems "to me it should be governed by the decisions of the "State where the land lies." (Citing **Slide & Spur Gold Mines vs. Seymour, 153 U. S. 509, 516.**) "The "enforcement of such right must we not presume "that Congress intended that the remedy should be "enforced in the manner conformable to like actions "within the same jurisdiction?"

Difference Between Penalty and Remedial Damages.

In **Wells vs. Graves, 41 F. R. 459,** it is said (p. 467):

> "A penal statute is ordinarily defined to be one "which inflicts a penalty for the violation of some one "or more of its provisions. The doing of the act for- "bidden incurs the penalty whether injury has been "caused thereby to any particular person. Under the "provisions of Section 5239, the liability of the di- "rectors is dependent not only on the fact of a viola- "tion of some one or more of the provisions of Title "62, but also on the fact of causing damage by such "violation to the association, its shareholders or other "parties. **In this particular, therefore, the section "does not impose a penalty, but creates a liability "for damages, if any such are caused by the wrong- ful acts of the directors.** If, then, the liability of "the directors under Section 5239 is not to be deemed "a penalty within the meaning of that term as used "in Section 1047, the limitation therein contained is "not applicable."

Jaggard on Torts, Vol. 1, p. 98:

> "Where the statute provides no penalty, and "merely enacts or prohibits a thing for the benefit "of a person, he shall have a **remedy upon this same "statute for the thing enacted for his advantage, "or for the recompense of a wrong done to him "contrary to the said law."**

In **United States vs. Maillard, 4 Penn. 459,** Blatchford, J., held, in effect (p. 465), that ignorance of the fact of the commission of an offense, and the creation

> "thereby of a right to bring suit for a forfeiture in- "curred, does not prevent the running of the statute

"or the accruing of the forfeiture sued for, as re-
"spects the thing or persons sued, as between it or
"him and the United States."

See **Vol. 3, Fed. Stat. Ann., p. 100.**

O.

Bringing the application of the plea of prescription under the law of Louisiana, it must be conceded to be conclusive.

In **Balfour vs. Browder, 6 Martin (N. S.), 708,** it was held that the prescription of action of party injured by the false return of a Sheriff runs from the date of the return. Text, p. 709:

> "As to the argument urged in the court below,
> "and to the overruling of which by the Judge in his
> "charge a bill of exceptions was taken, that prescrip-
> "tion could not run until the decisions of this Court,
> "because the plaintiff **could not know until then** what
> "would be the effect of return made by the defendant,
> **"it has with great propriety not been presented**
> **"here.** It is as novel as unsound; the plaintiff might
> "with just as much propriety and correctness argue
> "that he did not know that the prescription was of
> "one year."

For further Louisiana authority that the prescription runs from the date of the injury, see:

Pitkin vs. Rousseau, 14 An. 511, 513, 514;
Jones vs. Railroad Co., 125 La. 542, 545;
Rady vs. Fire Ins. Patrol, 126 La. 273, 276.

Respectfully submitted,

CHAS. S. RICE,
R. B. MONTGOMERY,
Attorneys for Defendants in Error.

O'SULLIVAN *v.* FELIX.

ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 249. Submitted March 9, 1914.—Decided April 13, 1914.

That an action depends upon, or arises under, the laws of the United States, does not preclude the application of the statute of limitations of the State. *McLaine* v. *Rankin*, 197 U. S. 154.

An action brought in the state court for damages for personal assault against persons violating Rev. Stat., §§ 5508 and 5509, is not an action for penalties but for remedial damages, and the period of prescription depends upon the law of the State. Rev. Stat., § 1047, does not apply.

The criminal proceedings and punishment for public wrongs provided by Rev. Stat., §§ 1979–1981 and 5510 and the actions in law and equity for the redress of private injuries resulting from violations of laws of the United States also provided by §§ 1979–1981 are distinct.

The term "penalty" involves the idea of punishment for infraction of the law and includes any extraordinary liability to which the law subjects a wrongdoer in favor of the person wronged, not limited to the damages suffered; while in a civil suit the amount of recovery for such damages is determined by the extent of the injury received and the elements constituting it.

194 Fed. Rep. 88, affirmed.

THE facts, which involve the construction and application of the statute of limitations of the State of Louisiana to claims for damages for personal assaults, are stated in the opinion.

Mr. W. S. Parkerson and *Mr. E. A. O'Sullivan* for plaintiff in error.

Mr. Charles S. Rice, Mr. R. B. Montgomery and *Mr. Alfred Billings* for defendants in error.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Action for damages for personal assault upon plaintiff in error, herein called plaintiff, by defendants in error, referred to as defendants, in the sum of sixty thousand dollars.

The petition alleges that defendants and others were indicted for violating § 5508 of the Revised Statutes of the United States. The indictment is set out in the petition and charges, with the usual verbosity of such instruments,

that an election was held in the parish of Jefferson, State of Louisiana, on November 3, 1908, for presidential electors, members of Congress, and certain municipal officers under and in accordance with the laws and Constitution of the United States; that certain named persons were, as defendants well knew, qualified to vote at such election, that such persons were at the polling places with the intention and for the purpose of voting, and, knowing this, the defendants feloniously conspired and confederated with each other and other persons to intimidate and prevent and did prevent by the use of deadly weapons such persons from voting.

It is alleged that the indictment further charged in a second count, a violation of § 5509 in that the defendants, with other named persons, conspiring to intimidate the voters named in the first count from voting at the election named, "did then and there, with force and arms, armed with dangerous weapons, to-wit: pistols, guns, scissors, wilfully and maliciously, unlawfully and feloniously and upon" the defendant commit an assault, and with the purpose and in the disposition described, "with a dangerous weapon, to-wit: a pair of scissors, inflict a wound less than mayhem."

That the defendants herein were convicted on both counts and sentenced to fine and imprisonment, and upon appeal to the Circuit Court of Appeals the conviction, sentence and fine were affirmed.

That the defendants conspired to prevent and did prevent the voters named in the indictment from voting and that in furtherance of the conspiracy plaintiff was maliciously and without cause or provocation "cut, bruised, beaten, his face and eye blackened, his beard cut, he knocked down senseless, and other indignities were heaped upon him" by the defendants, for which he has suffered damages in the sum of $60,000.

That plaintiff is sixty-five years of age, has practiced

law and held positions of honor and trust in the State, having been district attorney, state senator, and city attorney for the city of New Orleans.

The petition recites the injuries plaintiff received in defending himself from the assault upon him, and that he "was forced to appear in public, in performing his duties, carrying on his person the signs of the degradation and humiliation placed upon him."

The items of damage are set out as follows: For the wounding less than mayhem, $25,000; for humiliation, degradation and public ridicule and pain of mind, $25,000; punitive and exemplary damages, $10,000. Judgment was prayed for $60,000, the sum of these items.

Exception was filed to the petition on the ground that the damages having, as it is alleged, been inflicted November 3, 1908, more than two years and five months before the filing of the petition, the action is barred "by the prescription of one year from and after the day on which such damages were sustained, under the provisions of Articles 3536 and 3537 of the Civil Code of the State of Louisiana. Dismissal of the suit was prayed. The plea of prescription was sustained and the sole question pressed by counsel and which we are called upon to decide is the application of the state statute to the conceded cause of action. The court in passing upon the application of the statute of limitations said that plaintiff conceded that if the action was to be governed by the state statute it was prescribed, but he contended that it was an action for a penalty and governed by the prescription of five years, established by § 1047 of the Revised Statutes of the United States. The court was of opinion that the action was for "remedial damages and not for a penalty," and maintained the plea of prescription, citing *Campbell* v. *Haverhill*, 155 U. S. 610; *Brady* v. *Daly*, 175 U. S. 148, and dismissed the action with costs.

Judgment of the Circuit Court was affirmed by the

Circuit Court of Appeals. The court decided that the action was one for damages and not for a penalty and the limitations of five years against penalties or forfeitures (Rev. Stat., § 1047) was not applicable. It followed, the court said, that the state statute, which prescribes the action in one year, must be applied, citing §§ 3536 and 3537 of the Civil Code of Louisiana. 194 Fed. Rep. 88.

The opinions of the lower courts exhibit the contentions in the case, and the short question presented is whether the action is for damages or for a penalty. If for a penalty, § 1047 of the Revised Statutes applies, which provides: "No suit or prosecution for any penalty or forfeiture, pecuniary or otherwise, accruing under the laws of the United States, shall be maintained . . . unless the same is commenced within five years from the time when the penalty or forfeiture accrued." If for damages, the provisions of the Louisiana Code are applicable. They are as follows: Article 3536. "The following actions are also prescribed by one year:

That for injurious words, whether verbal or written, and that for damages caused by animals, or resulting from offenses or *quasi*-offenses."

And the prescription runs from the day the damage is sustained. Section 3537.

That the action depends upon or arises under the laws of the United States does not preclude the application of the statute of limitations of the State is established beyond controversy by cases cited by the Circuit Court and by *McLaine* v. *Rankin*, 197 U. S. 154, 158.

It is, therefore, not necessary to pursue in detail the argument of plaintiff based on the postulate that "the Sovereign alone can limit the right of action," and that because injury was inflicted on him in the course of violating Federal laws the limitation of the State could not apply. Congress, of course could have, by specific provision, prescribed a limitation, but no specific provision is ad-

duced. The limitation of five years is asserted on the ground that the action is for a penalty, and that it is such is deduced from the provisions of Title XXIV of the Revised Statutes securing equal civil rights to all citizens.

These provisions secure to all citizens the same rights that white citizens enjoy and make every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory, deprives another of the rights secured, liable "to the party injured in an action at law, suit in equity, or other proper proceeding for redress." Section 1979.

It is also provided that if a conspiracy be entered into between two or more persons to deprive another of the equal protection of the laws, or of equal privileges and immunities under the laws, and the persons conspiring to or cause to be done any act in furtherance of the object of the conspiracy whereby another is injured in his person or property, or deprived of having or exercising any right or privilege as a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. Section 1980.

Any one having knowledge of the wrongs conspired to be done and who, having power to prevent or aid in preventing the commission of the same, neglects or refuses to do so, shall be liable to the party injured or his legal representatives in an action on the case. Any number of defendants may be joined in the action. If the death of any party be caused by such act or neglect, the legal representatives of the deceased shall have an action therefor and may recover not exceeding $5,000 for the benefit of the widow of the deceased, if there be one, and, if there be no widow, then for the benefit of the next of kin. But no action under the provisions of the section can be sus-

tained which is not commenced within one year after the cause of action accrued. Section 1981.

Conspirators to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of his rights under the Constitution and laws of the United States, or because of his having so exercised the same, shall be fined not more than $5,000 and imprisoned not more than ten years; and shall, moreover, be ineligible to office under the United States. Section 5508.

If in violating any of the provisions of the two preceding sections any felony or misdemeanor be committed, the offender shall be punished as provided in the state laws.

And every person who, under color of any law, etc., subjects or causes to be subjected any inhabitant of any State or Territory to the deprivation of rights under the laws and Constitution of the United States shall be fined not more than $1,000 or be imprisoned not more than one year, or both. Section 5510.

There are other criminal provisions not necessary to mention.

It will be observed, therefore, that the sections of the Revised Statutes, which we have quoted, provide criminal proceedings and punishment for the public wrong, and actions in law or equity for the redress of any private injury, with a limitation in one instance of the amount of recovery and of the time for commencing the action to one year.

The penal and remedial provisions are, therefore, distinct and cannot be confounded. The term "penalty" involves the idea of punishment for the infraction of the law, and is commonly used as including any extraordinary liability to which the law subjects a wrongdoer in favor of the person wronged, not limited to the damages suffered. *United States* v. *Chouteau*, 102 U. S. 603, 611; *Huntington* v. *Attrill*, 146 U. S. 657, 666, 667. There is no justification for the contention of plaintiff, therefore, that the

remedy provided for a penalty and the limitation of time of bringing an action is five years under § 1047. It is very clear that the public wrong is punished by the fines and punishment prescribed, that the private injuries inflicted are to be redressed by civil suit, and the amount of recovery is determined by the extent of the injury received and the elements constituting it. This plaintiff indicates in his pleading, praying damages in the sum of $25,000 "for the wounding less than mayhem," $25,000, "for the humiliation, degradation and public ridicule," and $10,000 "as punitive and exemplary damages."

Judgment affirmed.